

**United States Steel Corporation and Brotherhood of Teamsters and Auto Truck Drivers, Local 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 20-CA-16855**

22 June 1984

**DECISION AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 19 December 1983 Administrative Law Judge George Christensen issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Respondent and the Intervenor<sup>1</sup> filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions<sup>2</sup> and briefs and has decided to affirm the judge's rulings, findings,<sup>3</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> The Intervenor Industrial Personnel Corporation made a formal appearance at the hearing through counsel.

<sup>2</sup> The Intervenor's motion to strike requests for extension of time to file exceptions is denied.

<sup>3</sup> For the reasons set forth by the judge we find the evidence insufficient to establish that the Respondent shared or codetermined those matters governing the essential terms and conditions of employment of the drivers at issue and therefore adopt his finding that the Respondent is not a joint employer of these employees. See *Laerco Transportation & Warehouse*, 269 NLRB 324 (1984).

In his Conclusions of Law the judge inadvertently omitted the conclusion that the Respondent did not violate the Act by refusing to participate in the processing of grievances.

**DECISION**

**STATEMENT OF THE CASE**

GEORGE CHRISTENSEN, Administrative Law Judge. On February 9, 10, and 11 and on March 2 and 3, 1983, I conducted a hearing at San Francisco, California, to try issues raised by a complaint issued on July 2, 1982, based on original and amended charges filed by Local 85 on January 20 and February 3, 1982.

The complaint alleges that at times pertinent United States Steel Corporation (USS) and Industrial Personnel Corporation (IPC) were joint employers of drivers employed by IPC to man trucks leased by USS for the purpose of hauling USS products between its San Francisco facilities and other locations and that USS violated Section 8(a)(1) and (5) of the National Labor Relations Act

by refusing to participate with IPC in processing a grievance filed by one of those drivers alleging violation of certain terms and conditions of a collective-bargaining agreement between IPC and Local 85 and by failing and refusing to bargain with Local 85 concerning its reduction in the number of drivers IPC was furnishing to USS to man USS leased trucks.

USS and IPC denied USS violated the Act on the ground they were not joint employers of the drivers in question, IPC was their sole employer, further contending that even if they were joint employers there was no violation because Local 85 waived any right it may have had to USS participation in the processing of the Davis' grievance and the reduction in the number of drivers and consented to IPC's representation of both its and USS interests in both matters.

The issues are: (1) whether at times pertinent USS and IPC were joint employers of the drivers; (2) if so, whether USS violated the Act by failing or refusing to participate in the processing of the Davis' grievance or to bargain with Local 85 over the reduction in the driver complement furnished by IPC to USS; and (3) if so, what is the appropriate remedy.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, to examine and cross-examine witnesses, to argue, and to file briefs. The General Counsel, USS, and IPC filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following

**FINDINGS OF FACT**

**I. JURISDICTION AND LABOR ORGANIZATION**

The complaint alleges, the answer admits, and I find that at all pertinent times USS and IPC were employers engaged in commerce in a business affecting commerce and Local 85 was a labor organization within the meaning of Section 2 of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Facts**

**1. The Joint Employer issue**

For a number of years USS had maintained a facility at San Francisco where it received, stored, and shaped steel brought from other facilities and delivered the finished products to end-users<sup>1</sup> within the area serviced from the San Francisco facility. The San Francisco facility utilized leased trucks, common carriers, and customer vehicles to pick up and deliver the products it handled, in a ratio of approximately 60 percent, 30 percent, and 10 percent, respectively.

Over the same period of time IPC and Cal-Western Company were labor brokers, i.e., they were in the business of furnishing drivers to those desiring such services.

<sup>1</sup> Machine and sheet metal shops, fabricators, builders, etc.

In the fall of 1981, USS San Francisco facility was contracting with IPC and Cal-Western to furnish drivers to man the USS-leased truck fleet.<sup>2</sup> Under the terms of the USS-IPC contract, the parties agreed: (1) IPC would furnish to USS whatever number of drivers USS desired; (2) the drivers furnished would be fully qualified, i.e., they would possess all licenses required under applicable federal and state laws, rules, and regulations, and they would be fully trained in the operation of the vehicles they were assigned to operate; (3) IPC would conduct physical and other examinations of the drivers furnished, maintain their time records, pay them their wages and benefits, comply with the terms of any collective-bargaining agreement between IPC and any labor organization governing their rates of pay, wages, hours, and working conditions, pay all Federal and state taxes growing out of their employment (social security, unemployment compensation, withheld income taxes, etc.), maintain workmen's compensation insurance covering them, conduct any union and other labor relations matters affecting them, and furnish them with USS uniforms; (4) IPC would furnish USS with such reports, records, and data as would enable USS to comply with applicable state and Federal laws, regulations, and rules governing its operation of its leased truck fleet as a private carrier; (5) IPC would remove any driver or drivers furnished at USS' request; and (6) USS would compensate IPC for the services of the drivers furnished on a cost-plus basis.<sup>3</sup>

Pursuant to the terms of the USS-IPC contract, in September 1981 IPC was supplying USS with eight drivers and Cal-Western furnished one driver.

The rates of pay, wages, hours, and working conditions of the drivers supplied by IPC to USS were governed by a collective-bargaining agreement between IPC and Local 85.<sup>4</sup>

At all pertinent times USS and IPC were separate corporations engaged in separate business operations, had no common owners or managers, and neither had any financial interest in or control over the other. IPC was a wholly-owned subsidiary of Leaseway, Inc., a company engaged in the business of furnishing vehicles and/or drivers to over 100 customers and employing in excess of 1,000 workers.<sup>5</sup>

The IPC and Cal-Western drivers furnished to USS wore USS uniforms supplied at USS expense and drove vehicles carrying a USS logo (as well as the identification of the truck lessor). The IPC and Cal-Western drivers, as well as the drivers of common carriers hired by USS to accomplish a substantial portion of its pickups and deliveries, received their bills of lading and other documentation controlling their deliveries and pickup from USS Traffic Manager, Richard Padovani. When customers complained or raised questions concerning the

merchandise and billing on delivery, the drivers relayed those complaints and questions to Padovani, who in turn contacted the appropriate USS official for dealing with the matter (sales, finance, billing, production, etc.). When a USS-leased truck had mechanical problems, the driver contacted Padovani who, in turn contacted the truck lessor (the lessor was responsible for repair and maintenance or replacement). When a driver was authorized to pay for a minor repair or replacement away from home, Padovani reimbursed the driver and recouped the amount advanced later.

From the time Richard Modic was appointed by IPC as manager of its western operations (in July 1981), Modic handled virtually all contacts with Local 85 officials and representatives concerning IPC's Local 85 represented drivers assigned to drive USS leased trucks, including negotiation of a collective-bargaining agreement to supplant the current IPC-Local 85 agreement, processing driver complaints and grievances, contract administration, discipline, securing casualties and replacements to service the USS account, etc. Modic instructed the drivers to contact him on all such matters, which they did.<sup>6</sup>

No USS representative participated in such negotiations, grievance processing, etc.<sup>7</sup>

IPC also carried out all the functions detailed in the USS-IPC contract: maintaining driver-time records, supplying necessary reports and documents, paying the drivers' wages, fringe benefits, tax deductions, etc., conducting driver physical examinations, safety training, etc.

#### 1. The Davis grievances

In the fall of 1981 Thomas Davis was working as the night hostler at USS' San Francisco facilities, moving its leased trucks as required for loading.

He was discharged by Modic on August 4, 1981, for provoking and engaging in a fight with one of USS' warehousemen at the facility.<sup>8</sup>

On August 7, 1981, Local 85 filed a grievance, naming IPC as the sole employer party, and alleging IPC violated the IPC-Local 85 agreement by discharging Davis without just cause. Modic denied the grievance, and Local 85 referred it to the next step—the Teamster Joint Council 7 Grievance Committee—again naming only IPC as the employer party. On August 20, 1981, Modic appeared on behalf of IPC before the grievance committee. No question was raised or request made for USS appearance and participation as a joint employer of Davis. The grievance was resolved by a decision to reduce the discharge to a disciplinary warning notice and a direction that IPC reemploy Davis when he produced a medical release.<sup>9</sup>

<sup>2</sup> USS also was contracting with other companies for scrap pickup, garbage collection, janitorial services, etc.

<sup>3</sup> The USS-Cal Western contract was not introduced into evidence.

<sup>4</sup> The rates of pay, wages, hours, and working conditions of the driver supplied by Cal-Western were governed by a collective-bargaining agreement between Cal-Western and a Los Angeles, California local union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

<sup>5</sup> The record does not disclose such information with respect to Cal-Western.

<sup>6</sup> Prior to Modic's arrival, Padovani performed some of these functions—attempting to resolve driver complaints, securing casualties or replacements—but this practice ceased after July of 1981.

<sup>7</sup> USS labor relations representative George Kulis handled all such matters affecting USS union-represented and nonunion employees.

<sup>8</sup> The warehousemen were represented by the ILWU and covered by a USS-ILWU agreement.

<sup>9</sup> Davis, alleging he was injured in the fight, applied for workmen's compensation.

During the subsequent month Modic heard Davis did not have a valid class I driver's license (required to operate USS-leased vehicles).

Thus when Davis produced a medical release on October 5, 1981, and requested reemployment, Modic refused to offer him employment until and unless he produced a valid class I driver's license.

On October 12, 1981, Local 85 filed a second grievance, naming IPC as the sole employer party, alleging IPC violated the IPC-Local 85 agreement by not complying with the August 20, 1981, Joint Council 7 Grievance Committee decision. Modic denied the grievance on the grounds Davis was unqualified and USS had requested his removal from its account because of the ill feeling between the USS night warehouse staff and Davis. Local 85 referred the grievance to the Teamster Joint Council 7 Grievance Committee, again naming only IPC as the employer party.

On December 17, 1981, Modic appeared on behalf of IPC before the committee. Again no question was raised or request made for USS appearance and participation as a joint employer of Davis. The committee deadlocked and the grievance was referred for consideration at the third step of the grievance procedure under the IPC-Local 85 agreement before the Teamsters Western Area Grievance Committee.

On January 5, 1982, Local 85 formally requested USS to appear at the February 1982 Teamsters Western Area Grievance Committee proceeding as the alleged joint employer of Davis. On January 12, 1982, USS denied the request, stating USS was not a joint employer of Davis.

On January 21, 1982, Modic wrote to Local 85 to advise Local 85 IPC was Davis' employer, USS was not, and IPC would continue to represent its interests with respect to Davis under the terms of IPC-Local 85 agreement.

On January 25, 1982, Local 85 filed a third grievance, naming IPC as the sole employer party, alleging IPC violated the IPC-Local 85 agreement by removing Davis' name from the seniority list of IPC employees assigned to work on the USS contract. Modic denied the grievance. Local 85 referred the grievance to the Teamsters Joint Council 7 Grievance Committee, naming only IPC as the employer party.

In February 1982 Teamsters Joint Western Area Grievance Committee considered the October 12, 1981 Davis' grievance. Modic appeared as the sole employer party. No question was raised or request made for USS appearance and participation as a joint employer of Davis. The grievance was resolved by a decision that IPC and Local 85 representatives would proceed together to the California Department of Motor Vehicles to ascertain if Davis had a valid Class I driver's license; if he did, IPC would pay Davis for time lost between September 10 and October 5, 1981 and would try to secure work for Davis on an account other than USS.

On March 11, 1982, Teamsters Joint Council 7 Grievance Committee considered the January 25, 1982 Davis' grievance. Modic appeared as the sole employer party. No question was raised or request made for USS appearance and participation as a joint employer of Davis. The grievance was resolved by a decision that IPC was to

assign Davis to such work as he could perform when such work was available.

IPC and Local 85 subsequently scheduled a date to visit the California Department of Motor Vehicles and ascertain whether or not Davis had a valid Class I driver's license. Local 85 subsequently canceled that scheduled date and never has rescheduled a date for such examination.

### 3. The partial discontinuance of USS use of leased trucks and IPC and Cal-Western drivers in its transportation operations

In the summer 1981, USS was utilizing both common carriers and leased trucks manned by IPC and Cal-Western drivers to conduct its transportation operations. IPC driver Donald Russell manned a San Francisco-Portland run, IPC driver Paul Redcloud manned a San Francisco-Salt Lake City run, Cal-Western driver Robert Savoie manned a San Francisco-Los Angeles run, and five IPC drivers manned local runs. The first three runs involved the pickup of loads at San Francisco for delivery to customers between San Francisco and the three distant terminal points, including deliveries to USS facilities at each such terminal point, followed by pickups at the USS facility at each terminal point and customer deliveries on the return run.

USS business steadily declined in 1981, necessitating the closure of USS Portland facility. Both the volume and frequency of the three long runs was reduced substantially, in many cases resulting in the return of empty trucks from their terminal points back to San Francisco. A substantial number of layoffs at the San Francisco facility of both unrepresented and ILWU-represented warehouse employees also occurred. The truck leases were due to expire in late 1981, necessitating either renewal for an additional term (normally 5 years) or nonrenewal.

USS reviewed its transportation operations and decided it would be economical to utilize common carriers for all rather than a portion of its three distant runs, enabling USS to reduce its leased fleet by three vehicles and its use of two of the IPC-furnished drivers and the single Cal-Western driver, retaining five vehicles and the use of six IPC-furnished drivers.<sup>10</sup>

In accordance with that decision, on September 9, 1981, USS notified Cal-Western, IPC, and its truck lessor effective September 30, 1981, it would no longer require the use of the three vehicles it was utilizing on its three long runs and it would no longer require the services of the three drivers supplied by IPC and Cal-Western to man those vehicles.

On September 17, 1981, IPC notified Local 85, Redcloud, and Russell that the services of Redcloud and Russell would not be needed on the USS account after September 30, 1981, in view of USS' action. Redcloud, Russell and Local 85 representative Henry Montano subsequently met with Modic to work out payment of accrued benefits to Redcloud and Russell based on the IPC-Local 85 agreement and the two drivers maintained contact with Modic thereafter in an effort to secure

<sup>10</sup> Five drivers for local runs and a night hostler.

work on other IPC accounts. Montano at no time during these conferences took the position USS was a joint employer of the two drivers, nor sought to discuss with either Modic or any representative of USS the effect on the two drivers of USS decision to discontinue the portion of its transportation operations formerly conducted by USS with leased vehicles driven by Redcloud, Russell, and Savoie.<sup>11</sup>

On and after October 1, 1981, USS increased its use of common carriers to make the pickups and deliveries to and from the points on its three long runs.

The first time Local 85 asserted USS as a joint employer of Redcloud and Russell was obligated to bargain with it concerning the effect of its September 1981 decision to cease conducting part of its operations with leased trucks manned by IPC drivers occurred in December 1981, when Montano made such an assertion to Padovani, followed by a letter dated December 30, 1981, from Local 85's counsel repeating the assertion and requesting that USS bargain with Local 85 concerning the matter.

On January 12, 1982, USS replied to that letter with a denial it held joint employer status vis-a-vis Redcloud and Russell and refused to comply with the request.

The record does not show that the local union representing Savoie ever took any action against either Cal-Western or USS with respect to Savoie's removal as the driver assigned by Cal-Western to handle USS' San Francisco-Los Angeles run.

#### B. Analysis and Conclusions

##### 1. The Joint Employer issue

For some time the Board and reviewing courts have applied four criteria for determining whether an employer who contracts for the services of another employer's employees is a joint employer of those employees for the purposes of the Act, namely, whether they have: (1) common ownership or financial control; (2) common management; (3) centralized control of labor relations; and (4) interrelated operations.<sup>12</sup>

It is undisputed at all times USS and IPC were separate companies engaged in separate business operations, that neither had a financial or ownership interest in or control over the other, and that they were separately managed, and I so find and conclude.

I further find and conclude that from and after July 1981, IPC exercised full, independent, and sole control over labor relations affecting its drivers assigned to service the USS account, including Russell and Redcloud, as evidenced by the fact IPC was the sole employer party to the agreement with Local 85 in effect on and after July 1981 covering their rates of pay, wages, hours, and working conditions; Modic on and after July 1981 negotiated the terms of the successor agreement thereto with

Local 85 with neither participation, nor review nor approval thereof by any representative of USS; Modic after July 1981 adjusted with Local 85 representatives and those drivers the questions, complaints, and grievances the drivers developed as a result of their employment on the USS account, with neither participation by nor approval thereof by any representative of USS; that IPC maintained for those drivers all their time and performance records, paid their wages, benefits, and other payments required by law arising from the employment relationship between them and IPC, scheduled their vacations, secured from Local 85's hiring hall casuals and replacements to meet USS' driver requirements; and administered the IPC-Local 85 agreement; all without the participation or review or approval of USS.<sup>13</sup>

I further find and conclude such interrelationship as existed in USS' and IPC's operations were those incidental to the normal contractor-customer relationship, and insufficient to support a finding they were joint employers of the drivers IPC furnished USS to man its leased vehicles.<sup>14</sup>

I therefore finally find and conclude the evidence failed to establish at times pertinent USS and IPC were joint employers of the drivers supplied by IPC (and Cal-Western) to man USS-leased vehicles<sup>15</sup> and find, instead, at all pertinent times IPC was their sole employer.

In view of the foregoing, I find it unnecessary to resolve the balance of the issues raised in this proceeding.

#### CONCLUSIONS OF LAW

1. At all pertinent times USS and IPC were employers engaged in commerce in business affecting commerce and Local 85 was a labor organization within the meaning of Section 2 of the Act.

2. At times pertinent USS and IPC were not joint employers of drivers supplied by IPC (and Cal-Western) to man USS' leased vehicles in USS' transportation operations.

3. USS did not violate the Act by refusing to bargain with Local 85 concerning the effect on drivers of its leased vehicles of its decision to assign to employees of common carriers all rather than a portion of the deliveries and pickups it made with leased trucks and drivers supplied by IPC (and Cal-Western) on three runs.

On these findings of fact and conclusions of law and on the entire record, I recommend the issuance of the following<sup>16</sup>

#### ORDER

The complaint shall be and is dismissed in its entirety.

<sup>11</sup> Other than furnishing information.

<sup>12</sup> *John Breuner Co.*, 248 NLRB 983 (1980).

<sup>13</sup> *Kaylor v. Crown Zellerbach, Inc.*, (9th Cir. 1981), 643 F.2d 1362; *Pulitzer Publishing Co. v. NLRB*, 618 F.2d 1275 (8th Cir. 1980); *Marine Engineers Beneficial Assn. District 2 (Grand Bassa Tankers)*, 261 NLRB 345 (1982); *John Breuner Co.*, 248 NLRB 983 (1980).

<sup>14</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>11</sup> Neither Montano nor any other Local 85 representative ever, at any time, contacted USS' labor relations representative at its San Francisco facilities concerning the effect of USS decision on Redcloud and Russell.

<sup>12</sup> *Radio Union Television Broadcast Technicians Local 1264 v. Broadcast Service*, 380 U.S. 255 at 256 (1965), and cases cited.